

ESTTA Tracking number: **ESTTA610661**

Filing date: **06/18/2014**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	85318060
Applicant	Monster Cable Products, Inc.
Correspondence Address	DAVID M KELLY KELLY IP LLP 1330 CONNECTICUT AVE NW, SUITE 300 WASHINGTON, DC 20036 UNITED STATES linda.mcleod@kelly-ip.com, docketing@kelly-ip.com, david.kelly@kelly-ip.com, stephanie.bald@kelly-ip.com
Submission	Request for Reconsideration
Attachments	Request to Remand and Suspend June 2014 (325715xD1162) (327059xD1162).pdf(43184 bytes) Exhibit A Monster Cable (327066xD1162).pdf(529692 bytes) Exhibit B Monster Cable (327062xD1162).pdf(399974 bytes) Exhibit C Monster Cable (327064xD1162).pdf(329858 bytes) Declaration of Jacky Hsiung (327071xD1162).pdf(34598 bytes)
Filer's Name	Robert D. Litowitz
Filer's e-mail	docketing@kelly-ip.com,robert.litowitz@kelly-ip.com,david.kelly@kelly-ip.com,linda.mcleod@kelly-ip.com
Signature	/Robert D. Litowitz/
Date	06/18/2014

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Applicant: Monster, Inc.
Serial Number: 85318060
Filing Date: May 11, 2011
Mark:



Examining Atty: Kim Teresa Moninghoff, Esq.
Law Office: 113

Commissioner for Trademarks
P.O. Box 1451
Alexandria, Virginia 22313-1451

**REQUEST FOR REMAND
AND SUSPENSION OF APPEAL**

Applicant Monster, Inc. respectfully requests that the Board remand this application to allow the Examining Attorney an opportunity to reconsider the Final Office Action, issued February 13, 2014, based on compelling new evidence.

As detailed in Applicant's Request for Reconsideration, Registration has been refused under Section 23 on the ground that this design is believed to be functional, and also because the design is believed to be a generic product design. This refusal involves highly technical patent references. Applicant has obtained a declaration from an employee of Monster, Inc., Jacky Hsiung, who designs and develops headphone designs. Mr. Hsiung's declaration is submitted in response to the Examining Attorney's recent statements in her last Office Action concerning the patents at issue, among other things. Applicant submits that this additional information and expert declaration will better inform the PTO of the issues, and possibly render the appeal moot.

It will also better inform the TTAB of the issues, so that the tribunal can fully understand the complex issues on appeal and make an informed decision if this case proceeds on appeal.

Accordingly, Applicant respectfully requests remand of this application to allow the Examining Attorney to time to review and consider Applicant's Request for Reconsideration (attached). Applicant also requests the suspension of the appeal pending disposition of the Request for Reconsideration.

MONSTER, INC.

Dated: June 17, 2014

By: /Robert D. Litowitz

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EXHIBIT A

LICENSE AGREEMENT

This License Agreement (hereafter "Agreement") is entered into as of June 30, 2012 (the "Effective Date") by and between, on the one hand, Monster, Inc. a California corporation and Monster, LLC, a Nevada limited liability company, (collectively hereafter "MONSTER"), and, on the other hand, Beats Electronics, LLC, a limited liability company organized under the laws of the State of Delaware, on the other hand (hereafter "BEATS").

RECITALS

WHEREAS, MONSTER and BEATS entered into that certain Amended and Restated License and Promotion Agreement dated August 20, 2009, as amended on February 28, 2010 and April 30, 2011 (the "LICENSE AGREEMENT") for the branding, manufacture, promotion and sale of headphone and speaker products which are distributed and sold globally.

WHEREAS, Monster, LLC and BEATS will terminate the LICENSE AGREEMENT on June 30, 2012 and, in connection therewith, MONSTER has retained all right, title and interest in and to a trademark consisting of features of a cable claimed in U.S. trademark application, Ser. No. 85/318060 and any corresponding foreign marks and registrations (collectively, the "TRADEMARKS").

WHEREAS, BEATS desires to manufacture, promote, distribute, and sell products bearing the TRADEMARKS after such assignment and MONSTER is amenable to granting such license.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants set forth herein and the mutual consideration exchanged between the parties related to their co-branding relationship over the past several years, MONSTER and BEATS agree to the following terms and conditions:

1) LICENSE GRANT

MONSTER hereby grants to BEATS an irrevocable, non-exclusive, perpetual, worldwide, royalty-free, fully paid-up, assignable and sub-licensable license to use the TRADEMARKS in connection with the use, manufacture, promotion, distribution, sale, offer for sale, importation and other exploitation and disposition of all products covered by the TRADEMARKS, or its contract manufacture(s) or similar sub-licensees involved in the manufacture, promotion, sale, offer for sale, importation and distribution of the above products. BEATS has no right, title, or interest in or to the TRADEMARKS other than as granted by this License.

2) TERM

The term of this Agreement shall commence on the Effective Date and remain in effect for so long as any subsisting right in the TRADEMARKS exists.

3) TERMINATION

BEATS shall have the right to terminate this Agreement at any time by providing written notification of termination to MONSTER.

4) EFFECT OF TERMINATION

Upon BEATS'S termination of this Agreement, BEATS will discontinue all use of the TRADEMARKS as soon as reasonably practicable.

5) QUALITY

Based on the history of development and co-marketing between MONSTER and BEATS, the parties are satisfied that the nature and quality of all goods sold by BEATS under the TRADEMARK conform to the standards established by MONSTER.

6) CONFIDENTIALITY

In connection with the performance of this Agreement, each of the parties may have access to certain confidential and proprietary information of the other parties. "Confidential Information" means any information that is not generally known to the public belonging or pertaining to the disclosing party that the disclosing party provides to the receiving party during the term of this Agreement, including without limitation, customer, financial, manufacturing, design concepts, profit margin, technology, and product development information and including any personal information of the principals involved with BEATS or MONSTER. Notwithstanding the foregoing, Confidential Information shall not include information which: (i) is or becomes generally available to the public through no fault of the disclosing party; (ii) is required to be disclosed by order of a court or other competent governmental agency or by applicable law; (iii) is, prior to the time of its disclosure, already in the possession of the party to which disclosure is made other than as a result of any breach of any obligation of confidentiality of which the disclosing party is aware, (iv) is independently developed without use of the Confidential Information or (v) any information as to the terms of this Agreement as is reasonably necessary for either party to share with third parties in connection with financing or transactional opportunities, provided that such parties are under written confidentiality obligations at least as protective as those hereunder. Recognizing that such information represents valuable assets and property of the parties and the harm that may befall the parties if any of such Confidential Information is disclosed, each party agrees to hold all such Confidential Information in strict confidence and not to use or otherwise disclose any such Confidential

Information to third parties without having received the prior written consent of the party to whom the Confidential Information belongs or pertains. The obligations of confidentiality created herein shall survive the expiration or any termination of this Agreement.

7) SUPERSEDING AGREEMENTS

This Agreement is the complete and exclusive statement of agreement between MONSTER and BEATS with respect to the TRADEMARKS and supersedes all prior proposals, understandings and all other agreements, oral and written, between the parties relating to the subject matter of this Agreement. The Recitals set forth above are incorporated herein as material terms of this License.

8) RELATIONSHIP OF THE PARTIES

MONSTER and BEATS are independent contractors. This Agreement does not, and shall not be construed to create an employer-employee, partner or joint venture relationship. This Agreement does not make either MONSTER or BEATS the agent or legal representative of the other for any purpose whatsoever. No representation shall be made by either party that would create an apparent agency, employment, partnership or joint venture. Neither MONSTER nor BEATS shall have the power, express or implied, to obligate or bind the other in any manner whatsoever.

9) AMENDMENTS; WAIVER

Except as provided herein, this Agreement may not be modified or altered except by written instrument duly executed by all parties. The provisions hereof may only be waived in writing by the parties hereto. No delay on the part of any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor any single or partial exercise of any such right, power or privilege, preclude any further exercise thereof or the exercise of any other such right, power or privilege. The rights and remedies herein provided are cumulative and are not exclusive of any rights or remedies that any party may otherwise have at law or in equity.

10) NOTICE

Any notice, request, or other communication required to be given to either party hereunder shall be in writing and may be delivered by U.S. Mail, regular or Certified, next day mail, facsimile transmission, or any other commercially acceptable means. The address of either party may be changed from time to time and any notice hereunder shall be sent to the then new address of the party giving the notice.

11) HEADINGS

Article and Section headings are for reference purposes only and shall not control or alter the meaning of this Agreement as set forth in the text.

12) SEVERABILITY

If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Agreement shall continue in full force and effect and shall in no way be affected, impaired or invalidated. Upon such determination that any term, provision, covenant or restriction is invalid, void or unenforceable, such term, provision, covenant or restriction shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable.

13) MULTIPLE COUNTERPARTS

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together constitute one and the same instrument.

14) LAW APPLIED

This Agreement and performance hereunder will be construed in accordance with the laws of the State of California without regard to the principles of conflict of laws. The parties agree and consent to the exclusive jurisdiction and venue in the State and Federal courts located in the Central District of California in Los Angeles, and waive any claim or defense of inconvenient forum or lack of personal jurisdiction in such forum under any applicable law, decision or otherwise.

IN WITNESS WHEREOF, MONSTER and BEATS have caused their respective signatures to be entered below on the dates set forth.

MONSTER, INC.

Signature: _____

Printed Name: _____

Date: _____

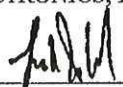
MONSTER, LLC

Signature: 

Printed Name: Dave Tognotti

Date: 11/29/12

BEATS ELECTRONICS, LLC

Signature: 

Printed Name: LUKE WOOD

Date: _____

NGEDOC5: 1993762.1

EXHIBIT B

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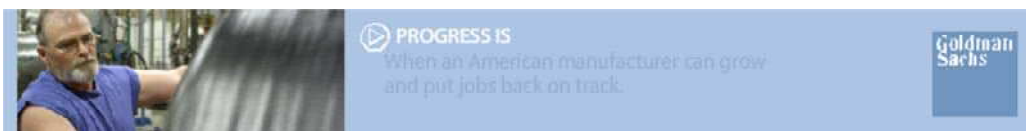
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How Beats headphones changed the audio world

By **Todd Leopold**, CNN

updated 5:53 PM EST, Sun January 12, 2014 |

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Hip-hop artist Lil' Wayne, wearing diamond-studded Beats headphones, sits courtside during the 2012 NBA All-Star Game.

STORY HIGHLIGHTS

Beats headphones dominate the \$2 billion headphone market

The accessories are criticized by audiophiles over their marketing, bass-heavy sound

Beats president: We focus on premium audio and excitement of studio experience

Brand has spawned rivals; observer says audio quality is likely to improve a lot

(CNN) -- Kelley Zapata loves her Beats.

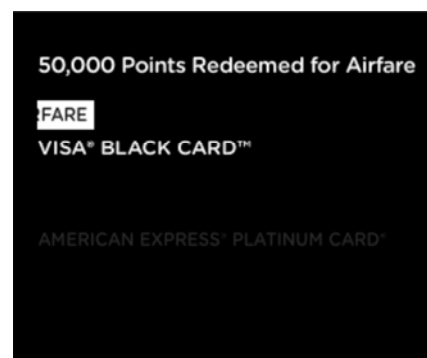
The University of Georgia junior first got a pair of Beats by Dre Studio headphones for Christmas in 2008. They were a revelation, she says, especially for someone used to Apple earbuds.

"I was blown away," she recalls. She's since invested in two more.

She's not alone. The audio company's lower-case "b" is ubiquitous on the ears of listeners across the country, seen on celebrities -- Lil Wayne at a Lakers game, Katie Holmes on a movie set -- and college students.

Indeed, according to the [NPD Group](#), a marketing research company, Beats controls 27% of the \$1.8 billion headphone market -- and 57% of the market for "premium" headphones, ones that cost \$99 or more. On- or over-the-ear Beats retail from about \$200 to \$400, so you can easily spend as much on the headphones as you can on your MP3 player or contracted phone.

That's a lot of "b"uzz.

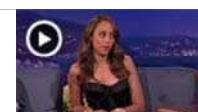


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Producer and musician Dr. Dre wearing his Beats at a Boston Red Sox game in 2010.

But along with the popularity has come a backlash. Beats have been criticized for being a marketing gimmick, a bass-heavy fashion accessory not up to the kind of high-quality audio sound they promote. Zapata admits she was initially seduced by the pitch: "I'm a big Lady Gaga fan, and she had them in her music video," she says.

For audiophiles, Beats are a sacrilege. They've filled up message boards complaining about the popular cans.

"(A) Timex with Rolex's price tag," wrote one responder to a [board titled "Why the Beats hate?"](#)

"To a lot of people, the fact that someone took our hobby and our industry and vastly perverted it to the public at large borders on offensive for a variety of reasons," added another poster.

But the audiophiles might be missing the point. What Beats has done, suggests Tyll Hertsens, is expand the market for better-quality headphones -- as witnessed by the countless headphone makers jockeying for space at the International Consumer Electronics Show in Las Vegas last week.

Building on the distinctiveness of Apple's white earbuds -- which announced their wearer owned a desirable iPod or iPhone -- Beats essentially created a new niche.

"What they did was brilliant," says Hertsens, editor of [InnerFidelity](#), a site devoted to personal audio. "They somehow knew that people were aware enough of headphones that they could make them have some cachet."

And cachet, he observes, comes with a price.

"It used to be that a \$250 price of headphones were expensive. Now that's just the norm. (Beats) raised the acceptable price of headphones," he says.

Audio quality and design

With that increased price has come a renewed awareness of both audio quality and design, says Hertsens.

"In the past three years or so, headphones have gotten a lot better," he says. They're on display and available for testing; people can walk into an Apple Store and truly hear the difference, he says.

Audiophiles always prized sound quality, of course. But the headphone brands they argued about -- brands such as Beyerdynamic, Grado (which has shunned advertising in its long history) and Sennheiser -- weren't widely known among consumers, particularly in an age [moving toward convenience and away from component stereo systems](#). Along with the omnipresent Sony, perhaps the best-known name in the premium market was Bose, and Bose [had its own detractors](#).

Few had eye-pleasing designs. The sound was what mattered, of course.

As Hertsens notes, what Beats did was change the formula. The brand dates back to the mid-2000s, when producer Dr. Dre and music mogul Jimmy Iovine were frustrated by their painstakingly crafted music being listened to through tinny earbuds.

In 2008, Beats put out the Studio, manufactured by Monster. The cans were an immediate hit.



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The philosophy of the company hasn't changed, says Luke Wood, originally a consultant to Beats Electronics and now the company's president.

Digital production and technical advancements improved the sound of records but headphones were lagging, he says, thanks to a convenience culture put forth by laptops, earbuds and MP3 files. (Ironically, Wood observes, Steve Jobs "really cared about sound": "I don't think anybody at Apple thought those white earbuds were the end-all of premium sound.")

"With Beats, the idea was to take the energy and passion of how we market our music and marry that with a focus on premium audio and the excitement of what we hear in the recording studio," Wood says.

He's aware of the criticism, but points out that a fondness for certain elements of audio -- like music itself -- is subjective.

"It's really about point of view and taste," he says. He, Iovine and Dre have "all made hundreds of records and spent tens of thousands of hours in the recording studio," he says. "I think we have an educated point of view and a consistent point of view to sound, and I certainly think we come from a place where we know what we're talking about."

The value of competition

[Beats competitors](#) are now legion, and many have copied the Beats playbook in marketing their headphones.

There are headphones from 50 Cent (SMS, which also has a collaboration with Lucasfilm), Bob Marley's estate (House of Marley, which promotes an enviro-friendly aesthetic), Quincy Jones (manufactured by AKG) and Tony Bennett (by Koss). [Lou Reed's last video](#) was for the Parrot Zik, designed by Philippe Starck.

Even the low-key [Grado now has a branded headphone](#), a collaboration with Bushmills Irish whiskey. Actor Elijah Wood and DJ Zach Cowie contributed to the design.

Monster, which no longer manufactures Beats, has launched a line with the producer Swizz Beatz -- a Monster investor -- called DNA. (Zapata, the Georgia student and Beats loyalist, says she's intrigued by them.)

NPD Group consumer electronics analyst Ben Arnold believes that, though the headphone market may be slowing from its double-digit growth of recent years, there's no sign of a crash. With December's sales, he expects 2013 to top \$2 billion, and says sales should go up another 5-7% in 2014.

Hertsens remains lukewarm on Beats' audio quality. In a detailed ["Celebrity Headphone Deathmatch" review](#) a couple of years ago, he gave grudging marks to the Studio and deplored the slightly cheaper Solo. But he approves of the greater emphasis on design and expects the audio quality of headphones, as a whole, will improve.

"(Right now) there's nothing to compete against Beats when you're talking about, 'I'm going to give you style, I'm going to give you comfort, and I'm also going to give you sound quality,' " he says. "In a way we're indebted to Beats because they made more money available for manufacturers to compete in the marketplace and make better headphones."

Beats' Wood is planning on it. He says he's not worried about the competition, just maintaining Beats' quality.

"What we're seeing is this resurgence of premium sound. People really care and hear the difference," he says. "I think we'll see this, not just in headphones, but also in home stereos, in cars -- and ultimately the whole bar will be raised."

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**canteenjesus** • 5 months ago

Although I commend Dre for his ability to sell his brand, I often find myself laughing inside when I see people wearing these. Oh you kids.

486   • Reply • Share >**Barbara** → canteenjesus • 5 months ago

Nice article, I learned that Beats were first made by monster? The same company that charges \$40 for a hdmi cable? That explains a lot. Lol!

295   • Reply • Share >

Guest → Barbara • 5 months ago

True test: **Go to the Beats web site. Tell me the driver specs! They are NEVER listed because if they list them, the competition's superiority over Beats would be obvious.** Beats is a novelty item.

226   • Reply • Share >**mxprivateer** → Guest • 5 months ago

You are absolutely correct. A very close friend of mine is a design engineer for a high end audio company and educated me on how beats headphones are nothing but overpriced garbage marketed as a status symbol.

127   • Reply • Share >**Dejandon** → mxprivateer • 5 months ago

That also sounds like a phone product from a company by name Apple

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I own a Samsung S4 and my wife an Apple iPhone 5s. Camera is



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What The Beats Deal Means For Apple

Trefis Team (<http://blogs.forbes.com/people/trefis/>), Contributor

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(<http://finapps.forbes.com/finapps/jsp/finance/compinfo/CIAtAGlance.jsp?tkr=aapl&tab=searchtabquotesdark>) announced Wednesday that it would be buying popular audio products manufacturer Beats Electronics and its fledgling music service business Beats Music for about \$3 billion, making it the largest acquisition in the company's history. Apple will pay roughly \$2.6 billion in cash with an additional \$400 million in equity that would vest over time. Apple projects that the acquisition, which is expected to close in fiscal Q4 2014, will be accretive to its fiscal 2015 earnings. The deal marks a departure of sorts for Apple, which has traditionally focused on acquiring companies with niche technologies and talent that it can incorporate into its products and services, instead of buying well known consumer brands. Following the acquisition, the Beats brand will continue to exist alongside Apple's brand. While it is likely that Apple is paying the bulk of the acquisition price for the electronics business, much of the future value could lie in the music streaming service and the talents of the Beats team. Here's a brief rundown on what the deal could mean for Apple.

Trefis has a \$638 price estimate for Apple (<https://www.trefis.com/company#/AAPL>), which is about in line with the current market price.

See our complete analysis for Apple stock here
(<http://www.trefis.com/company?hm=AAPL.trefis>)

Audio Products Business Likely Very Profitable, But Risks Exist

Beats Electronics primarily sells headphones, speakers and audio software. The company's wildly popular headphones retail from \$99 to about \$450 in the United States, while its speakers retail for upwards of \$199. The premium end of the headphone market (prices \$100+) in which beats operates remains the fastest growing segment in the headphones space. According to research firm NPD, the premium headphone market in the United States grew (<https://www.npd.com/wps/portal/npd/us/news/press-releases/premium-us-headphone-market-surpasses-%241-billion-in-2013-according-to-npd/>) by around 21% in 2013, crossing the \$1 billion mark. As of June 2013, Beats held about 59% of this market (<http://online.wsj.com/news/articles/SB10001424127887323423804579020692100040648>). While Beats electronics hasn't disclosed historical financials since it was private, its margins are likely very healthy and should comfortably meet Apple's gross margin requirements. According to the New York Times, a pair of its high-end headphones may cost as little as \$14 to manufacture. Additionally, Apple could further drive up Beats' revenues by expanding the business into new countries via Apple stores as well as select Apple Authorized Resellers.

However, we believe that there are some risks in the audio products business. With the Beats acquisition, Apple isn't exactly buying into cutting edge audio technology or intellectual property that it wouldn't be able to develop in house. Beats audio products routinely receive mixed reviews from critics who often cite them as being overpriced for the listening experience that they offer. Beats products have gained market share due to their slick design and celebrity-driven marketing, and these attributes could run the risk of being a fad.

Apple Could See Value In Streaming Service

While the headphones business remains the most recognizable part of Beats, the Music streaming service is likely to have been a key reason behind the acquisition. Apple is no longer the formidable digital music powerhouse that it once was, with the advent of online streaming music services such as Spotify. Unlike Apple's traditional iTunes model of making customers pay for specific content while locking them onto its platform, online music streaming services offer much more flexibility to consumers, allowing them to listen to a vast library of songs on-demand and across devices for a small monthly fee, or for free with ads. These services have seen a significant uptake over the last few years, and this has been impacting Apple's iTunes business. According to Morgan Stanley Research, revenues for Apple's iTunes have been declining (<http://blogs.barrons.com/techtraderdaily/2014/05/28/apple-app-store-to-lift-services-revenue-profit-says-morgan-stanley/?mod=BOLBlog>) over the last three quarters.

While Apple does offer an Internet radio service of its own, iTunes Radio, which competes with the likes of Pandora, it lacks an on-demand streaming service. On-demand streaming is becoming increasingly popular with consumers since it allows them to pick and choose the individual songs they



want to listen to. This is likely where Beats Music comes into the picture. While Apple could have developed its own on-demand streaming service, the Beats acquisition gives the company an instant entry into the space. Moreover, Beats Music has received largely positive reviews, winning praise particularly for its curation of content. Subscriptions costs about \$99.99 per year or about \$10 per month, and the service has signed up about 200,000 paying customers since its launch in January. Although this remains a fraction of Spotify's 10 million+ paying customers, the user base could be poised to rise with Apple's acquisition.

Co-Founders' Industry Connections Could Be Beneficial

Beats co-founders Jimmy Iovine and Dr. Dre are influential figures in the music industry. The duo, who are set to join Apple in undisclosed roles, will bring in a strong understanding of the market and popular culture, in addition to their deep connections within the music industry. This could prove invaluable for Apple, particularly in its negotiations with music companies, a role which was often handled by the late Steve Jobs.

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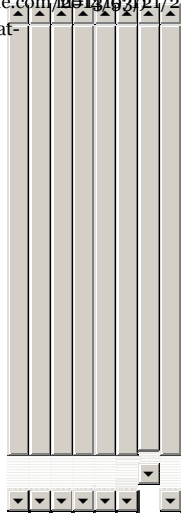
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Monster, Inc.
Serial Number: 85318060
Filing Date: May 11, 2011
Mark:



Examining Atty: Kim Teresa Moninghoff, Esq.
Law Office: 113

Commissioner for Trademarks

P.O. Box 1451

Alexandria, Virginia 22313-1451

DECLARATION OF JACKY HSIUNG

I, Jacky Hsiung, submit this declaration on behalf of applicant Monster, Inc.

1. I am employed by Monster, Inc. My educational background includes a Bachelors of Science degree in Industrial Design from San Jose State University in 2003. My responsibilities at Monster have included designing electronic cables for audio and audio/visual applications. Among the products I have designed and invented are cables for audio headphones. I have personally been involved in inventing, designing, and/or developing over 100 products for Monster.
2. Among the headphone cables I have been involved in inventing, designing, and developing is the headphone design that is the subject of U.S. Patent No. 8,068,633 entitled Headphone Cable Splitter. I am a co-inventor of that patent. As described in our

patent, our invention consists of headphone cables that are substantially wider than they are thick. We describe and illustrate as an embodiment of this invention a “flat ribbon-like cable.” And indeed, flat cables are one way of practicing our invention. But as we state in the patent, there are other structural and functional equivalents to a “flat” cable, and all of them that are substantially wider than they are thick would be encompassed by our invention.

3. The drawings in the patent depict a flat cable with contoured edges. The cross-section shown in the drawings reveals a cable whose cross-sectional shape is oblong; two surfaces are flat, and those flat sides give way to edges that are contoured/rounded. The contoured edges create the oblong. If the edges were 90-degree angles, the cross-sectional shape would be rectangular and would give the cable a noticeably different appearance.
4. The contoured edges were a design choice and were selected for their aesthetic and ornamental appeal. The contoured edges do not perform any function and are in fact incidental to the functions carried out by the cable. Cables according to our invention could have a variety of shapes, and do not need to have contoured edges or oblong cross-sections, to carry out the functions described in the patent. Those functions, namely, reducing tangling and accommodating wires, can be accomplished with a variety of cable designs that would fall within the scope of our patent.
5. I understand that Monster has applied for a trademark, Serial No, 853180060, for the mark consisting of “**the curved outside contours of a headphone cable** that give way to sides of the cable jacket that are wider than they are thick.” (Emphasis added.) I have read the declaration of Lance Rake submitted by Monster in support of that trademark

application. I understand that the Examining Attorney handling this trademark application refused to give Professor Rake's declaration any weight because Professor Rake had not previously designed headphone cables.

6. Based on my many years of experience in the audio cable industry, I disagree with the Examining Attorney's conclusions regarding Professor Rake's credentials and expertise. According to his declaration, Professor Rake not only has decades of experience in industrial design, but is a Professor of Industrial Design at a major U.S. university, the University of Kansas. As a skilled designer and teacher of industrial designers, Professor Rake surely is qualified to opine on the aesthetics of cable design in general and of our design in particular. Any suggestion that he is not qualified by skill, training, and experience to comment on the visual impact of contoured edges, and the importance of such a design feature, betrays a fundamental misconception about the interplay between design and technology.
7. I agree with all of the statements by Professor Rake in paragraph 21 of his declaration. In particular, I agree that the "curved outside contours in Monster's cable design represent an arbitrary, ornamental design choice, not driven by function." I agree that edge treatments such as the curved outer contours of our cable design can be, and in this case are, an important design element and can materially affect consumer perceptions. I further agree with Professor Rake's conclusion in paragraph 19 of his declaration that "numerous [other] aesthetic designs can be used for practicing [our] invention."
8. I have reviewed the design alternatives prepared by Professor Rake and shown in Exhibit B to his declaration. I agree that each of those alternative designs can be used for practicing the invention described in the '633 patent, of which I am a co-inventor. Each

of Professor Rake's design alternatives has both width and thickness, and in each example, the width is substantially greater than the thickness. Each design alternative, moreover, can accommodate left and right audio channel conductors, and each would resist tangling. And Professor Rake's proposed alternative designs could be manufactured without adding appreciably to the cost or complexity of manufacture.

Stated another way, using one of Professor Rake's designs would not put manufacturers at a competitive disadvantage because of the cost of manufacturing them.

9. Finally, there is no basis for or merit to the suggestion that Professor Rake's alternative designs are unsuitable for use with a cable splitter. Designing splitters to accommodate those designs would not be an impediment to their use.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct under 28 U.S.C. s§ 1746. This declaration was executed on June 17, 2014.

Signature: _____/s/_____
Jacky Hsiung
Monster, Inc.